Gerald Delane Murray v. State of Florida

SC03-1241

>>NEXT CASE ON THE COURT'S AGENDA
IS MURRAY VERSUS STATE.
>> READY TO PROCEED?
>> MAY IT PLEASE THE COURT, I'M
RICHARD KURITZ, APPOINTED TO
REPRESENT GERALD MURRAY, WHO HAS
BEEN THROUGH FOUR SEPARATE FIRST
DEGREE MURDER TRIALS ON THE SAME
SET OF FACTS, ONE MISTRIAL AND
THE OTHER TRIALS RESULTED IN
CONVICTIONS, THAT WERE APPEALED
TO THE HONORABLE COURT AND
OTHERS RESULTED IN REVERSALS,
THE FIRST TRIAL WAS REVERSED
SPECIFICALLY BECAUSE THE STATE'S
EXPERT HAD AFFIRMATIVELY MISLED
THE TRIAL COURT.
HAVES THAT WAS THE COURT'S
LANGUAGE, THE SECOND TRIAL WAS
REVERSED IN PART BASED ON FAULTY
DNA TESTING, WITNESS TAMPERING
AND THE PROBABILITY OF EVIDENCE
TAMPERING.
THE STATE'S EXPERTS ATTEMPTED TO
MISLEAD THE TRIAL COURTS IN THE
PAST AND THAT HAPPENED IN THIS
CASE, THE FIRST TWO ISSUES IN MY
BRIEF DEAL WITH TWO SIGNIFICANT
ISSUES, THE ONLY RELEVANT
EVIDENCE, THIS GOVERNMENT HAS
BEEN ABLE TO OFFER UP, EVIDENCE
RELATING TO GERALD MURRAY AND
THE HOMICIDE.
FIRST ONE, SORRY.
BOTH ISSUES WERE ACTUALLY RAISED
AND ARGUED LAST TIME, ON APPEAL.
THE FIRST ISSUE AS IT RELATES TO
Q-42, THE GOVERNMENT PREVAILED
AND THE SECOND ISSUE, RELATES TO
Q-20, THE DEFENSE, MURRAY
PREVAILED ON.
>> COULD YOU MAKE SURE BECAUSE I
DID GET, 2 -- BOTH HAIR SAMPLES.
>> CORRECT.
>> 242 WAS FOR HAIRS FOUND ON
THE BODY OR NIGHTGOWN.

>> CORRECT THE BODY.
>> OKAY.
AND WERE PUBIC HAIRS.
>> THE -- I THINK I MIGHT HAVE CONFUSED THE TWO.
>> YOU HAVE IT RIGHT.
THE -- DEPENDING ON WHAT TESTIMONY YOU ACCEPT AS BEING TRUE THE FBI LAB AND U.S. WHEN HE RECEIVED THE HAIRS IN THE LAB, TESTIFIED THERE WAS A CAUCASIAN HEAD HAIR AND BODY HAIR AND ONE CAUCASIAN PUBIC HAIR AND DIDN'T COUNT HAIRS BUT BELIEVES BASED ON HIS NOTES THERE WERE BETWEEN 5 AND 21 HAIRS.
>> AND THOSE WERE RECOVERED FROM HER BODY.
>> CORRECT.
>> AND THOSE WERE REFERRED TO AS Q-42.
>> CORRECT.
>> AND THE OTHER Q-20 ARE THE ONES THAT WERE RECOVERED FROM HER NIGHTGOWN.
>> A GARMENT THAT WAS -- YES, GARMENT FOUND IN THE BATHROOM AND AFTER RECOVERY AND SUBMISSION TO THE --
>> WERE THE HAIRS 242 AND 220 EVER INTERMINGLED?
WHAT WAS -- WHICH HAIRS WERE ALLEGED -- ALLEGEDLY PUT INTO THE BAG WITH THE NIGHTGOWN AND THE --
>> 20.
Q-20.
>> 42.
>> Q-42.
THE THRUST WAS THE EVIDENCE TECHNICIAN TOOK ONE HAIR WITH A PAIR OF TWEEZERS OFF THE BODY.
>> A NUMBER OF HAIRS BUT NOT WITH CONTAMINATION WITH THE NIGHTGOWN AND THE....
>> NOT AS IT RELATES TO THOSE.
>> NOW I'VE FIGURED IT OUT.
>> GOOD.
OKAY.
AS TO CHANGES, THE TESTIMONY, I BELIEVE IS CRITICAL IN THIS CASE, AT THE FIRST TRIAL, THE EVIDENCE -- NUMBER OF HAIRS WAS

-- TOUCHED ON, THE CRITICAL ISSUE AND ONE OF THE CRITICAL ISSUES IN THE CASE IS THAT EVIDENCE TECHNICIAN, AT THE FIRST TRIAL ON CROSS-EXAMINATION, TESTIFIED, THAT INDEED, WITH TWEEZERS HE HAD TAKEN ONE HAIR OFF OF HER CHEST AND ONE HAIR OFF OF HER LEG, AND PLACED THEM IN AN ENVELOPE AND SEALED IT UP AND SUBMITTED IT TO -- TESTING AND FBI LAB AND WHEN THE ANALYST OPENED IT UP HE TESTIFIED TO WHAT I SAID, THERE WERE SEVERAL HEAD HAIRS, CAUCASIAN AND BODY HAIRS AND ONE CAUCASIAN PUBIC HAIRS AND HE DIDN'T COUNT THEM AND HE SAID BETWEEN 2 AND 10, AND AT A LOW END, THERE WERE FIVE HAIRS AND HIGH END, 21 HAIRS.

>> ISN'T THE EXPLANATION, WHAT COLOR IS THE HAIR, YOU KNOW WHAT COLOR IT WAS.

>> THERE'S NEVER TESTIMONY REGARDING COLOR OF HAIR.

>> BUT THE TECHNICIAN, SO I UNDERSTAND, BECAUSE I WANTED TO GET -- (Inaudible)... SEES AN AREA WHERE THERE ARE HAIRS. A HAIR. AND TAKES IT AND PICKS IT UP AND PUTS IT INTO THE BAG AND SEES ANOTHER AREA AND PICKS IT UP. SO, THE EXPLANATION FOR SAYING HAIR HE SAID THERE WERE TWO AREAS WHERE I PICK IT UP, THOUGH I SAID, HAIR, I AM TALKING ABOUT TWO AREAS AND WHETHER I PICKED UP ONE OR -- WHETHER I PICKED UP ONE OR A COUPLE MORE IN THE SAMPLE, THERE, I'M GETTING THE IMPRESSION THAT THESE ARE NOT THE PIECES THAT, YOU KNOW, NOT LIKE DARK BLACK HAIR HANGING AROUND ON A -- AN AREA, THAT, TO ME, THE IMPRESSION I HAD AS TO WHY THE TRIAL JUDGE FOUND... FINDING THERE IS AN EXPLANATION FOR THE DISCREPANCY.

>> THE THRUST OF THAT IS, THAT IN THE FIRST TRIAL, THIS ISSUE WAS RAISED, BRIEFED, AND

UNFORTUNATELY, FOR MR. MURRAY, THE COURT REVERSED THE CONVICTION ON THE DNA, FAULTY DNA WHICH THE EXPERT MISLED THE TRIAL COURT AND THIS COURT NEVER GOT TO THE ISSUE.
SECOND TRIAL, THIRD, FOURTH TRIAL THERE WAS A CHANGE IN THE TESTIMONY.
HE WAS NO LONGER SAYING IT WAS SPECIFIC HAIR AND BEGAN TO SAY THERE WAS A HAIR SAMPLE FROM THE CHEST OR HAIR SAMPLE FROM THE LEG ALLOWING FOR WIGGLE ROOM ON THAT.
AND THIS THRUST OF OUR ARGUMENT TODAY IS, AND THE LAST TRIAL, FOURTH TRIAL, WHEN THE PERPETUATED HIS TESTIMONY, I WAS TRIAL COUNSEL AND ASKED THE QUESTION.
THERE CAME A PASSAGE OF TIME IN WHICH YOU CHANGED FROM TWO HAIRS TO HAIR SAMPLES, AND I WANT TO KNOW HOW OR WHY THAT HAPPENED.
AND THE WITNESS SAID, UNDER OATH, THAT IT WAS AFTER ANOTHER TESTIMONY CAME OUT, THAT THERE WAS POTENTIALLY MORE HAIRS, I CHANGED MY TESTIMONY.
AND THAT IS WHAT THE EVIDENCE TECHNICIAN SAID.
AFTER HE HEARD MORE HAIRS AT THE FBI LAB I CHANGED MY TESTIMONY.
>> WHAT DO WE DO WITH THAT?
LET'S ASSUME (Inaudible) I'M LYING NOW, YOU DIDN'T SAY YOU ARE LYING NOW, YOU ARE GOING -- (Inaudible) WHAT IS THE STANDARD ON THAT ONE?
WHETHER (Inaudible) ISSUE OF TAMPERING?
AN ISSUE OF LACK OF RELIABILITY ON -- I'M ASSUMING HE CROSS EXAMINED HIM ON THAT AND THE JURY MADE ITS OWN DETERMINATION, HOW RELIABLE IT WAS.
TELL US, ON APPEAL, WHAT DO WE LOOK AT.
>> I BELIEVE IN THE TEXT OF THIS CASE IN WHICH WE'RE ARGUING THERE WAS A PROBABILITY OF TAMPERING, THE RESULTS SHOULD HAVE BEEN THAT THE GOVERNMENT,

Q-20, WHICH WE GOT A REVERSAL ON, THE BURDEN SHOULD HAVE SHIFTED TO THE STATE AND STATE TO CALL ALL THE WITNESSES IN THE CHAIN OF CUSTODY TO DESCRIBE THE PROBLEMS.
BECAUSE WHAT WE HAVE IN THE FBI LAB, WE FIND OUT LATER IS THIS FBI ANALYST, IN TRIAL ONE AND TWO AND THREE, TESTIFIED THAT HE RECEIVED THE HAIRS.
THAT HE RECEIVED IT -- PULLED OUT THIS STATE'S INITIAL BRIEF FROM MURRAY ONE AND I SUPPLEMENTED THE RECORD ON APPEAL ON THIS CASE FOR ALL OF THE CRITICAL TESTIMONY OF CERTAIN WITNESS AND THE STATE'S INITIAL BRIEF IN THE FIRST CASE, THE -- DIDN'T REACH THE MERITS OF IT, HE TESTIFIED HE RECEIVED A SEALED BOX.
HE FOUND NUMEROUS INDIVIDUAL SEALED EXHIBITS.
THAT HE NOW HAD ALL THE HAIRS AND THIS PROBLEM IS, IN THE FOURTH TRIAL, WHEN -- RECROSS, WHINE ASKED HIM, WHY ARE YOUR INITIALS ON HERE AND I SHOWED HIM THE ITEM, HE SAID, THOSE WEREN'T EVEN HIS INITIALS AND HE DIDN'T WRITE THEM AND --
>> AGAIN, YOU ARE TALKING ABOUT Q-42.
>> Q-42.
>> SO, WERE ALL OF THE HAIR SAMPLES, WHETHER THERE WERE TWO OR THERE WERE 21, WERE THEY ALL...
>> NO.
>> THE ONLY THING -- WELL, AT THIS TRIAL, THE ONLY TESTIMONY WAS, THAT ONE --
ONE HAIR, MICROSCOPICALLY WAS CONSISTENT WITH MURRAY'S AND COULDN'T SAY IT IS HIM, THEY CAN'T EXCLUDE HIM.
>> AND THE OTHER HAIRS WERE NOT IDENTIFIED.
>> THEY WERE NOT IDENTIFIED AS GERALD MURRAY'S.
>> WERE THEY IDENTIFIED -- Inaudible).
>> YES, IF I RECALL SOME WERE

IDENTIFIED AS BEING THE VICTIM
AND I BELIEVE ONE WAS IDENTIFIED
AS BEING TAYLOR'S.
IN THIS CASE.
AND, THE PROBLEM, TO ANSWER THE
COURT'S QUESTION, HOW DO YOU
HANDLE IT ON APPEAL, WE SHOULD
REVERSE IT, IT REQUIRES THE
GOVERNMENT TO PUT FORTH THE
PROPER CHAIN OF CUSTODY.
IN THIS TRIAL WE HAVE THE
GOVERNMENT'S FBI WITNESS,
TELLING US THAT HE DID NOT EVEN
PUT HIS INITIALS ON THE ITEM.
BEFORE TRIAL, HE PRESENTED THE
EVIDENCE, YOU RECOGNIZE THIS,
YES, HOW DO YOU RECOGNIZE IT,
HAS MY INITIALS ON IT, MOVE IT
INTO EVERYDAY AND WE REALIZE, HE
DIDN'T PUT HIS INITIALS ON IT
AND DIDN'T ACTUALLY TOUCH THE
ITEM.
SOMEBODY ELSE DID AND ACTUALLY
IN THIS CASE WHERE THERE ARE
HAND-WRITTEN NOTES ABOUT WHAT IS
OBSERVED DON'T HAVE A NAME OR
DATE ON IT AND TRIAL THREE, HE
SAYS THE TECHNICIAN THAT DID
THAT, HER NAME WAS PAULA FRASER.
>> IF WE DIDN'T HAVE THIS
TESTIMONY, WHICH REALLY ONLY
SAYS THAT ONE HAIR THAT WAS ONE
HAIR THAT WAS FOUND WAS
CONSISTENT WITH MR. MURRAY'S
HAIR, IF WE DID NOT HAVE THAT IN
THIS TRIAL, WHAT WOULD WE HAVE?
WHAT KIND OF EVIDENCE --
ACTUALLY WOULD CONNECT
MR. MURRAY TO THIS MURDER.
>> YOU DON'T HAVE THE HAIR, IN
THIS CASE, YOU ONLY HAVE THE
SNITCH IN THE CASE, NO PHYSICAL
EVIDENCE WHATSOEVER --
>> WHAT.
>> A SNITCH.
THERE WAS A PERSON THAT HE
ALLEGEDLY CONFESSED TO.
A -- CONFESSED TO, HE ESCAPED
AND THE PERSON AFTER HE ESCAPED
GOT PICKED UP AGAIN AND ESCAPED
AGAIN AND DID A STRING OF BANK
ROBBERIES AND HAD THE DEATH
PENALTY IN HIS CASE WAIVED --
>> THOUGH, DON'T WE HAVE HIM

BEING PLACED RIGHT NEAR THE CRIME WITH IN A SHORT PERIOD OF TIME.
>> ABOUT TWO-AND-A-HALF MILES DOWN THE ROAD HE'S SEEN AT A HOUSE OF A FRIEND OF HIS.
>> I WANT TO MAKE SURE WE GET TO -- BECAUSE YOU HAVE GIVEN I THINK THE ARGUMENT, 242, -- Q-42 AND Q-20, NOW HAVEN'T THEY NOW ESTABLISHED A -- YOU KNOW, HE SAID HE GOT -- YOU HAVE TO SHOW, THERE MIGHT BE TAMPERING.
THE BURDEN ON THE STATE NOW TO SHOW THE CHAIN OF CUSTODY.
AND HASN'T THAT BEEN DONE.
>> I DON'T BELIEVE SO.
AND YOU RESPECTFULLY, I SAY THAT HAS NOT BEEN DONE, WHEN THE COURT REVERSED ON THE BASIS OF Q-20, THE BURDEN WAS UPON THE GOVERNMENT TO SPECIFICALLY CALL ALL OF THE WITNESSES IN THE CHAIN OF CUSTODY TO EXPLAIN AWAY ANY AND ALL DISCREPANCIES AND IF THE COURT READS THROUGH THE TRANSCRIPT OF THE PRETRIAL HEARING THERE IS NO WAY THAT THIS COURT COULD HAVE REASONABLY CONCLUDED THE WAY IT DID AND AS A MATTER OF FACT, AUTO CITED IN THE BRIEF, THE TRANSCRIPT AT THE END ON PAGE 149, THIS COURT SAYS THE ONLY -- TRIAL COURT THE ONLY PURPOSE OF THE HEARING IS TO DETERMINE TWO THINGS AND ONE BAG AND I AM JUST -- NOW THERE ARE TWO THINGS AND TWO BAGS AND I'M TRYING TO REACH THE THRESHOLD WHETHER WE'LL HEAR ABOUT IT AT TRIAL AND THE COURT HAS CONCERN AND DOESN'T ADDRESS THE PLASTIC BAG AND THREW HIS HAND IN THE AIR AND 13 LINES LATER, NOTHING SIGNIFICANT IN THE INTERIM, GRANTS THE -- BASICALLY, THE STATE ESTABLISHED WHAT THEY NEED TO ESTABLISH, AND THE WITNESS WHO TESTIFIED AT TRIAL, ABOUT THE PLASTIC BAG WAS NOT CALLED TO THE HEARING.
>> THIS IS A BAG THAT HAS THE UNDER -- NIGHTGOWN IN IT, AND SOME HAIRS WERE FOUND IN IT.

>> CORRECT.
>> AND SO, IN MURRAY-2, THIS COURT SAID THAT ORIGINALLY, IT INDICATED ONLY A NIGHTGOWN.

>> AND SO IN MURRAY 2 THIS COURT SAID THAT ORIGINALLY IT INDICATED THERE WAS ONLY A NIGHTGOWN, AND SO THAT SORT OF IS A POSSIBILITY OF TAMPERING.
AND SO THE STATE ON THE RETRIAL TRIES TO DEMONSTRATE THERE WAS NO TAMPERING BY SAYING WHAT?
>> THEY CALLED TWO WITNESSES, TWO EVIDENCE TECHNICIANS -- DETECTIVE AND EVIDENCE TECHNICIAN TO TESTIFY 13 YEARS EARLIER THOUGH THEY HAD NO REPORTS, NO NOTES TO REFRESH THEIR RECOLLECTION, THEY TESTIFIED THEY OPENED UP THAT ITEM THAT SHOULD HAVE BEEN PRESERVED FOR TRACE EVIDENCE RECOVERY.
YOU SHOULDN'T BE OPENING THAT UP, BUT HE DID SO.
AND THEY SEPARATED IT OUT THEMSELVES --
>> SEPARATED THE NIGHTGOWN FROM THE HAIR.
>> FROM THE LOTION BOTTLE.
>> BUT THAT HAD TO BE DONE AT SOME POINT IN TIME BECAUSE THEY WERE TESTED IN DIFFERENT PARTS OR DEPARTMENTS, CORRECT?
>> YES.
>> OKAY, SO --
>> [INAUDIBLE]
>> WELL, THAT'S THE TESTIMONY, AND THEN THE PROBLEM IS THAT THESE TWO INDIVIDUALS SEPARATED IT RATHER THAN SOMEONE WITHIN THE DEPARTMENT WHERE THESE EXAMINATIONS WERE GOING TO TAKE PLACE?
IS THAT YOUR ARGUMENT?
>> THAT'S PART OF MY ARGUMENT.
THE OTHER PORTION IS THIS IS A CASE WHERE THE PASSAGE OF TIME, MEMORIES ARE NOT FADING.
MEMORIES ARE GETTING BETTER.
IN ONE, TWO, AND THREE, THE ISSUE WAS RAISED IN TRIAL TWO --
>> NOW YOU'RE TRYING TO CONVINCE

US AS A JURY.
WE REALLY NEED TO LOOK AT IT
FROM THE LEGAL PERSPECTIVE.
>> YES, SIR.
THE ANSWER TO YOUR QUESTION IS
THEY HAD OPENED AND SEPARATED TO
BE PROCESSED AT SOME POINT.
THERE WAS NO DOCUMENTATION OR
CHAIN OF CUSTODY TO ESTABLISH --
WHAT THEY TESTIFIED TO AT THE
PRETRIAL HEARING WAS TRUE, BUT,
YES, IT WAS ULTIMATELY TESTED.
AT THE HEARING WHAT I WAS ASKING
FOR WAS THERE WAS STILL THIS
LOTION BOTTLE IN A PLASTIC BAG.
WE DON'T USE PLASTIC BECAUSE IT
PROMOTES MOLD AND MILDEW.
SO WHO'S GOING TO TESTIFY ABOUT
THIS BAG?
AND THE PROSECUTOR TELLS ME IT'S
GOING TO BE THE LEAD DETECTIVE.
LO AND BEHOLD, HE NEVER
TESTIFIES TO THAT, AND LATE IN
THE TRIAL AN EXAMINER, AGAIN,
WITH NO NOTES --
>> THIS IS WILSONSOME.
>> WILSON.
HE ALL OF A SUDDEN TESTIFIES --
>> DID YOU ALLEGE AT LEAST ON
THAT ONE, YOU KNOW, AND I
REALIZE THAT WE, YOU KNOW, IT'S
LIKE NOW SEEING THESE ARE TWO
SEPARATE ISSUES, AND I'M GETTING
THAT IN MY MIND, BUT DID YOU
ALLEGE A DISCOVERY OF RICHARDSON
VIOLATION AT THAT POINT?
IN OTHER WORDS, YOU DIDN'T KNOW,
WAIT, SURPRISE WITNESS?
I DIDN'T KNOW HE WAS GOING TO
TESTIFY ON THAT?
>> I LOOKED AT THAT OVER THE
WEEKEND AND ABSOLUTELY DID NOT
MAKE THAT OBJECTION.
WE APPROACHED SIDEBAR, WE HAD A
DISCUSSION ABOUT IT --
>> WOULDN'T THAT, I MEAN, AGAIN,
AND THIS SOUNDS LIKE, YOU KNOW,
YOU'RE VERY PREPARED IN TERMS OF
ALL THIS STUFF, BUT YOU KNOW
THAT'S GOING TO BE MAJOR ISSUE.
ISN'T THAT THE WAY WE DEAL WITH
SURPRISES DURING TRIAL IS TO
REQUIRE THAT, YOU KNOW, IT'S
RAISED AND SAY I'M SURPRISED BY

THIS TESTIMONY?
>> I, ACTUALLY, AS SIDEBAR I USED THE TERM I'M "AGHAST" BY IT.
>> "AGHAST" BUT YOU DON'T EXPECT A TRIAL JUDGE BASED ON "AGHAST" TO SAY, WELL, ARE YOU ASKING FOR A RICHARDSON HEARING THEN?
>> CORRECT.
I SPECIFICALLY DIDN'T ASK FOR IT, I THINK CLEARLY EVERYBODY KNEW IT WAS A SURPRISE WITNESS, I WAS SHOCKED TO HEAR THE TESTIMONY.
I WENT INTO MY OPENING STATEMENT MAKING THE ARGUMENT NOBODY WAS GOING TO HEAR ABOUT THIS, AND WHEN WE WERE HAVING THAT SIDEBAR I DIDN'T UTTER THE WORDS "RICHARDSON HEARING," AND I DID NOT.
AND I REGRET THAT.
THE PROSECUTOR MISLED ME AND TOLD ME IT WAS GOING TO BE THE LEAD DETECTIVE WHO WAS GOING TO DO THAT, AND I ASKED TO TAKE THAT DETECTIVE'S DEPOSITION, AND THE JUDGE WOULD NOT EVEN LET ME TAKE HIS DEPOSITION.
I SAID, JUDGE, HE JUST TOLD ME IT'S GOING TO BE DETECTIVE OSTEEN, CAN I TAKE THE DEPOSITION?
>> PART OF THE PROBLEM WE HAVE HERE IS THIS AN APPEAL -- WHAT, THE FOURTH TRIAL?
>> CORRECT.
>> WE HAVE TO TAKE IT IN THE CONTEXT OF WHAT HAPPENED DURING THE COURSE OF THIS TRIAL.
>> CERTAINLY.
>> OBVIOUSLY, THERE HAVE BEEN PROBLEMS WITH SOME OF THE STATE'S EVIDENCE, AND THEN IT APPEARS HERE THAT WHAT THE STATE HAS DONE IS THAT BY THE TIME OF THE FOURTH TRIAL THEY'VE REALLY PUT THE BEST FACE THAT THEY CAN ON THIS.
YOU'VE DONE A VERY GOOD JOB OF GOING BACK TO EACH TRIAL, YOU KNOW, TO SHOW WHAT THE TESTIMONY WAS THERE AND THE PROBLEMS WITH IT, BUT AREN'T WE LEFT REALLY

WITH THE NET EFFECT OF THAT YOU HAVE IN A SENSE IMPEACHED SOME OF THE TESTIMONY THAT WAS GIVEN IN THIS FOURTH TRIAL?
BUT, NEVERTHELESS, IT STILL HAS BEEN UP TO THE TRIAL COURT JUDGE TO, BASED ON THE TESTIMONY OF THE STATE'S WITNESSES DURING THE COURSE OF THE FOURTH TRIAL, TO ADMIT THIS EVIDENCE.
ISN'T THAT REALLY WHERE WE END UP?
YOU'VE GONE -- AS I SAY, YOU'VE GONE BACK NOW AND DONE A TREMENDOUS JOB OF TRACING THESE INCONSISTENCIES, BUT HOW DO WE OVERCOME THE FACT THAT BY THE TIME OF THE FOURTH TRIAL THE STATE'S PUT BAND-AIDS ON ALL OF THESE ISSUES?
AND WE'RE GOING TO HAVE GREAT DIFFICULTY IN FINDING AN ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT JUDGE OF ALLOWING THIS EVIDENCE IN.
SO HELP ME WITH THAT.
>> I WILL.
AND TO THE ABUSE OF THE DISCRETION, I BELIEVE THAT WE ABSOLUTELY SUFFICE ON THAT BASED ON THE COURT'S COMMENTS AND IMMEDIATELY THEREAFTER ALLOWING IT IN.
>> AND THAT HINGES ON THE PLASTIC BAG, THAT'S REALLY THE KEY?
>> NO, IT'S NOT.
THERE'S AN EXTRA BAG AT THE HEARING, A MISSING BAG AT THE HEARING, AND NOBODY ADDRESSES THE PLASTIC BAG AT THE HEARING, SO, YES, SIR.
CLEARLY, THAT WAS THEIR BURDEN.
AT THAT POINT IT HAD ALREADY BEEN REVERSED AND FIX THE FULL CHAIN OF CUSTODY, AND CLEARLY IT WAS AN ABUSE OF DISCRETION --
>> AND THAT WAS THE SOLE BASIS WE REVERSED LAST TIME?
>> NO.
YOU ALSO REVERSED BECAUSE THE STATE'S EXPERT ATTEMPTED TO TAMPER WITH MY EXPERT AND I WASN'T ALLOWED TO CROSS-EXAMINE

ON IT, ALSO BECAUSE OF FAULTY DNA AS WELL.
>> WHAT WAS THE INCRIMINATING EVIDENCE FROM THE NIGHTGOWN AND FROM LOTION?
THAT WAS THE OTHER ITEM THAT WAS IN --
>> A LOTION BOTTLE.
>> LOTION BOTTLE.
SO WHAT WAS THE INCRIMINATING EVIDENCE FROM THOSE TWO PIECES OF EVIDENCE --
>> BY THE TIME --
>> -- THAT LINKS YOUR CLIENT TO THE CRIME?
>> BY THE TIME IT GETS TO THE FBI LAB, SAME AS THE BODY, THAT THERE WAS A HAIR, AT LEAST A HAIR THAT HAD MICROSCOPIC CONSISTENCIES SIMILAR TO MURRAY'S.
COULDN'T SAY IT'S HIS, BUT COULDN'T EXCLUDE HIM.
>> THAT WAS THE NIGHTGOWN.
>> CORRECT.
>> AND WHAT ABOUT THE LOTION BOTTLE?
WHAT FROM THE LOTION BOTTLE CONNECTED TO MR. MURRAY?
>> NOTHING.
>> NOTHING FROM THE LOTION BOTTLE.
>> NO.
AND JUST TO ANSWER YOUR QUESTION, THAT'S PART OF THE GREAT PROBLEM WE HAVE HERE IS BECAUSE WITH THE PASSAGE OF TIME MEMORIES HAVE GOTTEN BETTER, AND THERE'S BEEN CHANGE IN TESTIMONY, AND ALL I CAN DO TO SAVE JOE MURRAY'S LIFE IS TO CROSS-EXAMINE AND TO IMPEACH.
>> ISN'T THAT, I GUESS WHAT JUSTICE ANSTEAD IS SAYING THAT IF NOW YOU SAY ESSENTIALLY I THINK THAT THE STATE IS NOT TELLING THE TRUTH.
YOU'RE SAYING WILSON -- YOU'RE SAYING THAT.
>> YES, I AM.
>> BUT WE HAVE NO BASIS ON THIS RECORD TO SHOW THAT HE'S NOT TELLING THE TRUTH OTHER THAN SAYING IT'S LOGICAL THAT

SOMEBODY, YOU KNOW, 20 YEARS AFTER OR WHATEVER IS GOING TO NOW COME UP WITH THIS AND THEN THEY FILLED IN THE BLANKS WITH UNTRUTHFUL TESTIMONY.
I IMAGINE YOU ARGUED THAT TO THE JURY.
>> TRUE.
>> OKAY.
THE JURY SAYS I DON'T THINK THIS IS RELIABLE, YOU KNOW, THAT GOES INTO THE MIX.
THE JUDGE MAKES A DISCRETIONARY CALL THAT ENOUGH HAS BEEN ESTABLISHED IN CHAIN OF CUSTODY THAT THIS IS, GOES TO THE CREDIBILITY BUT NOT ADMISSIBILITY.
AT THAT POINT ONCE IT'S IN, I DON'T SEE A BASIS THAT YOU'RE GIVING US, YOU KNOW, LEGAL BASIS THEN FOR US TO REVERSE ON EITHER 242 OR 220.
SO GIVE US, AGAIN, THE MERE FACT THAT IT SOUNDS LIKE THERE MIGHT BE CHANGES, AND MAYBE THERE'S SOMETHING THAT'S NOT TRUTHFUL WHICH WOULD BE HORRIBLE, OF COURSE, FOR THE SYSTEM OF JUSTICE, BUT WE CAN'T SPECULATE ABOUT THAT MERELY BECAUSE WE ALL KNOW THAT MEMORIES GET WORSE, NOT BETTER WITH TIME.

>> CERTAINLY.
AND I THINK IT WOULD BE A HORRIBLE MISCARRIAGE OF JUSTICE TO EXECUTE ANYBODY IN THE UNITED STATES OF AMERICA BASED ON WHAT CLEARLY HAS HAPPENED IN THIS CASE.
AFTER THE REVERSAL IN CASE ONE, CHASE CHANGES HIS TESTIMONY TO GIVE WIGGLE ROOM.
AFTER THE REVERSAL IN CASE TWO, YOU NOW HAVE THREE WITNESSES POPPING UP WITH ABSOLUTELY FABULOUS NEW TESTIMONY WITHOUT ANY NOTES, WITHOUT ANY RECORDS, ANYTHING.
AND I SUBMIT TAKEN IN THE TOTALITY OF THE CIRCUMSTANCES AND THE REASON I WENT THROUGH --
>> BUT WE DON'T HAVE A CASE THAT

SAYS, YOU KNOW, THIS IS IN
POSTCONVICTION THAT SOMETHING
ELSE COMES OUT, THAT YOU FIND
THE MEMO THAT SHOWS YOU'VE GOT
TO SAY THIS, AND THE GUY SAYS,
NO, I WON'T, AND YOU GET THAT IN
POSTCONVICTION.
BUT WHAT I'M ASKING YOU, THEN, I
GUESS THE ONLY OTHER LEGAL BASIS
THAT YOU DID ARGUE IS LIMITATION
ON CROSS-EXAMINATION OF THE
CHIEF EXAMINER.
AND THE CHIEF HAIR ANALYSIS
ABOUT WHAT'S BEEN GOING ON.
THIS FBI HAIR LAB IS NOT
INNOCENT OF MISCONDUCT OVERALL.
>> YES.
>> WE KNOW NOW THAT THERE WAS A
LOT OF FALSE TESTIMONY BEING
PRESENTED.
HOWEVER, YOUR PROBLEM IS THAT IT
WAS MALONEY WHO WAS NOT INVOLVED
IN THIS CASE, IT'S BEEN THE
SUBJECT OF MOST OF THE
INVESTIGATION BY THE DEPARTMENT
OF JUSTICE AND HIS LAB.
SO IT SEEMED TO ME THAT, YEAH,
IT'S AN INTERESTING POINT, BUT
AGAIN A DISCRETIONARY CALL THAT
IS TOO FAR AFIELD FOR THIS
WITNESS.
>> TWO TOPICS THERE.
FIRST, IT WASN'T JUST MALONEY.
HE'S BEEN ADMITTING THAT HE
LIED, BUT THE REASON HE WAS ABLE
TO GET AWAY WITH ALL OF THAT WAS
BECAUSE THERE WERE NO PROTOCOLS,
NOTHING SET UP IN THERE TO
PROTECT THE INTEGRITY OF THIS
BUILDING BECAUSE HE COULD DO
WHAT HE WANTED.
JUST LIKE WE LAID OUT IN MY
CROSS-EXAMINATION, HE DIDN'T
KNOW WHO BROUGHT THE STUFF IN
THE LAB, HE CHANGED THE NAME
ABOUT WHO HAD IT IN THE LAB.
I WASN'T ALLOWED TO
CROSS-EXAMINE THAT DURING THIS
TIME PERIOD THE REASON THERE
WERE SO MANY PROBLEMS ARE THE
REASONS WE NOW KNOW CAME OUT OF
THE DEPARTMENT OF JUSTICE.
WE, AS THE COURT SAID, WE KNOW
IT WAS INTO ALL OF THAT.

>> BEFORE YOU SIT DOWN, YOU'RE IN YOUR REBUTTAL.
GOING BACK TO THE OTHER EVIDENCE THAT LINKS MURRAY TO THE CRIME.
NOW, HOW CLOSE TO THE TIME OF THE MURDER DID MS. WHITE TESTIFY THAT SHE SAW MURRAY AND TAYLOR?
>> MS. WHITE SAW THEM TWO-AND-A-HALF MILES AWAY SOMETIME AROUND MIDNIGHT, 1:00, AND --
>> THE DOGS WERE BARKING.
>> YES.
AND THEY'D COME OUT OF HIS BUDDY'S GARAGE.
>> AND THEN WHEN WAS --
>> SHE WAS --
>> -- THE JEWELRY FOUND WITH MURRAY?
>> SHE WAS FOUND DECEASED THE NEXT MORNING, AND AS FAR AS THE JEWELRY WAS CONCERNED, MONTHS? MONTH OR TWO LATER?
IT WAS AT STEPHEN TAYLOR'S HOUSE, NOT JOE MURRAY'S.
NONE OF THAT PHYSICAL EVIDENCE EVER CONNECTED TO JOE MURRAY.
THE ONLY THINGS THAT BROUGHT HIM IN ARE THESE HAIRS THAT WERE MICROSCOPIC AND THE SNITCH.
>> MURRAY AND TAYLOR HAD BEEN SEEN TOGETHER.
>> SEEN TOGETHER EARLIER IN THE EVENING.
>> THERE'S ALSO SOME EVIDENCE THERE WERE MULTIPLE FOOTPRINTS.
>> THAT COMES BACK TO WILSON AGAIN.
WHEN I FIRST ASKED HIM ABOUT IT, HE WAS ONLY ABLE TO SAY THERE'S ONE BRITTANIA SHOE PLACE, AND HE CAME INTO TRIAL THREE AND TESTIFIED DIFFERENTLY.
>> WELL, WERE THERE FOOTPRINTS LINKED TO MURRAY?
>> NO.
NO.
THERE WAS A SHOE PRINT THERE.
I THINK THEY SAID --
>> I THOUGHT IT WAS LINKED TO TAYLOR.
>> IT WAS LINKED TO TAYLOR.
NONE OF THE SHOE PRINTS, NONE OF THE JEWELRY, NOTHING ELSE WAS

EVER LINKED TO --
>> I THOUGHT THE SIGNIFICANCE OF THE MULTIPLE SHOE PRINTS WAS THAT THERE WAS MORE THAN ONE PERSON.
>> THAT'S WHAT THEY WERE TRYING TO GET ACROSS, AND WILSON AT LEAST IN TRIAL THREE -- AND I DON'T THINK THERE WAS ANY TESTIMONY ON TRIAL FOUR INDICATED HE WAS NOT POSITIVE -- HE WAS NOT ABLE TO SAY FOR SURE THAT THERE WAS ADDITIONAL, HE JUST WAS NOT ABLE TO GET A FULL READ ON A PRINT.
HE WAS NOT ABLE TO SAY AFFIRMATIVELY THERE WERE TWO SETS OF SHOE PRINTS HERE.
THANK YOU.

>> PLEASE THE COURT, STEVE WHITE REPRESENTING THE APPELLEE.
GETTING TO THE OVERALL CONTEXT OF THE EXHIBITS Q42 AND Q20, ISSUES 1, 2, AND 3, TO BRIEFLY SUMMARIZE THE OTHER EVIDENCE IN THE CASE --
>> LET'S NOT -- I MEAN, THERE'S OTHER EVIDENCE, BUT WE'RE HERE ON WHETHER -- I MEAN, OBVIOUSLY THE STATE THOUGHT THIS WAS PRETTY IMPORTANT EVIDENCE BECAUSE AFTER TWO REVERSALS BASED ON IT, THEY GOT IT ALL TOGETHER AND THEY'RE PUTTING IT IN.
I REALLY WOULD THINK THAT -- ARE YOU TRYING TO ARGUE THAT EVEN IF IT WAS ADMITTED, IT'S SOMEHOW HARMLESS ERROR --
>> THAT'S ONE OF THE ARGUMENTS THE STATE MAKES.
>> ON THE HAIR?
>> THE TERMS OF MURRAY AND TAYLOR BEING TOGETHER IN THE NEIGHBORHOOD, THE SAME NIGHT OF THE MURDER.
>> IT'S JUST HARD FOR ME --
>> BUT --
>> YOU CAN SAY THAT, BUT I THINK THAT IT SORT OF MAKES A MOCKERY OF WHAT THIS COURT HAS DONE IN TWO OTHER CASES WHERE WE'VE FOCUSED ON THE HAIR, WE'RE

ASSUMING THE STATE CARES ABOUT
THIS EVIDENCE.
IT'S NOW SPENT A LOT OF TIME ON
THIS TRIAL TO GET THESE TWO
PIECES OF EVIDENCE IN, AND NOW
YOU'RE GOING, OH, IT REALLY
WASN'T A BIG DEAL?
>> WELL, IT'S A PART OF THE
PUZZLE, YOUR HONOR, AND THE
STATE DISPUTES THE ASSERTION
THAT THE STATE MISLED ANYBODY
REGARDING THESE HAIRS.
I MEAN, I'D LIKE TO GO THROUGH
Q42 AND Q20 --
>> MAYBE YOU DO THAT FIRST.
OTHER JUSTICES MIGHT THINK IF
IT'S ADMISSIBLE, IT'S HARMLESS,
BUT TO ME THAT'S A TOUGH SELL.
>> IN FACT, MURRAY TOLD THE
DETECTIVE, "YOU SHOULD HAVE
GOTTEN THE RESULTS BACK LAST
YEAR."
I MEAN, BASICALLY MURRAY DIDN'T
DISPUTE THAT THE HAIRS MATCHED
HIMSELF, THAT THE HAIRS WERE
CONSISTENT, WHEN HE TALKED TO
THE DETECTIVE.
HE SAID, "YOU SHOULD HAVE GOTTEN
THE RESULTS BACK LAST YEAR."
AND MURRAY WENT ON TO TALK ABOUT
TAYLOR LEAVING HIS SEMEN AT THE
SCENE, AND YOU WON'T FIND MY
SEMEN, TOO, WHICH THE STATE
WOULD ARGUE IS AN IMPLICIT
ADMISSION.
>> DID THEY FIND HIS SEMEN
THERE?
>> YES, YOUR HONOR.
>> THEY FOUND --
>> TAYLOR'S.
AND, OF COURSE, IN THE PRIOR
ITIRATIONS OF MURRAY THERE WAS
DNA ANALYZED, IDENTIFIED AS
MURRAY'S, BUT NOT SEMEN.
I'D LIKE TO GET BACK TO --
>> I MISSED THAT STATEMENT.
THERE'S OTHER DNA THERE?
WHAT DID YOU SAY?
>> IN THE EARLIER ITIRATIONS OF
THIS CASE IN TERMS OF THE DNA
ANALYSIS ON MURRAY WHICH WAS NOT
INTRODUCED IN THIS CASE BECAUSE
THE PHOTOGRAPHS WERE SOMEHOW
LOST IN THE RECORD AND THE

RECORD GOING BACK AND FORTH.
WE DON'T KNOW HOW OR WHY THOSE PHOTOGRAPHS WERE LOST, BUT IN ANY EVENT, THE TRIAL COURT EXCLUDED THE DNA IN THIS TRIAL, THE DNA ON MURRAY.
BUT GETTING TO THE ISSUES AT HAND, Q42 AND Q20.
FIRST OF ALL, LET ME GET BACK TO THE LOTION BOTTLE AND THE PLASTIC BECAUSE THAT WAS WHAT WAS LAST DISCUSSED BY COUNSEL.
>> NOW WE'RE GOING TO BE DEALING WITH Q20.
>> THIS IS Q20.
>> AND THEN THE HAIRS FOUND ON THE NIGHTGOWN.
>> YES, YOUR HONOR.
FIRST OF ALL, THE STATE DISPUTES THERE'S ANY DISCREPANCY ABOUT THE BAGS.
BASICALLY WHAT HAPPENED IN MURRAY 2, THE LAST TIME THIS CASE WAS BEFORE THE COURT, WAS THERE WAS A GAP IN THE EXPLANATION AS TO HOW WE STARTED OUT WITH THE LOTION BOTTLE AND THE GARMENT BAG AND THE GARMENT IN THE SAME BAG, AND THEN WHEN THE ANALYST GETS IT, THERE'S NO LOTION BOTTLE THERE.
AND THIS COURT SAYS, WELL, THAT SHOWS A PROBABILITY OF TAMPERING, AND THE BURDEN SHIFTED TO THE STATE.
WELL, THE COURT SENDS IT BACK TO THE TRIAL COURT, AND THE STATE HAD THIS EVIDENCE ALL ALONG, IT JUST DIDN'T PUT IT ON FOR THE 1990 TRIAL WHICH THIS COURT'S OPINION REVIEWED IN 2002.
THE STATE EXPLAINED THE GAP BETWEEN THE INITIAL BAG THAT CONTAINED THE GARMENT AND THE LOTION BOTTLE AND THE BAG THAT THE ANALYST GETS, AND IT DOES NOT CONTAIN THE LOTION BOTTLE.
AND IT EXPLAINS IT BY CALLING THE DETECTIVE AND EVIDENCE TECHNICIAN AT A PRETRIAL EVIDENTIARY HERRING ON MAY 12TH RIGHT BEFORE THE TRIAL.
THEY TESTIFY AT THE EVIDENTIARY HEARING THAT WE TOOK THE BAG

CONTAINING THE GARMENT, WHICH
WAS ALSO IN ANOTHER BAG -- 28C,
I BELIEVE -- SO THE GARMENT'S IN
THE BAG, AND THAT BAG IS IN THE
BIG BAG WITH THE LOTION BOTTLE.
WE TOOK THAT BAG CONTAINING ALL
THAT TO FDLE A DAY OR TWO AFTER
IT WAS SEIZED, AND WENT WE GOT
TO FDLE, WE OPENED THE BIG BAG,
AND WE TOOK THE GARMENT BAG
WHICH WAS IN ANOTHER BAG WHEN IT
WAS -- AND THE BAG THAT IT WAS
OVERALL IN, AND WE PUT ALL THOSE
BAGS IN A NEW BAG --
>> AND IS ALL THAT TESTIMONY,
ARE THERE -- I WOULD THINK WE
HAVE CHAIN OF CUSTODY WHERE
EVERYTHING IS EXPLAINED.
ARE THERE DOCUMENTS THAT SHOW,
THAT WOULD HAVE SOLVED THIS
MYSTERY FROM THE BEGINNING THAT
SHOWS EXACTLY IN THIS MURDER
CASE STEP ONE, TWO, THREE, FOUR?
>> THERE ARE LOG SHEETS, I CAN'T
TELL THE COURT -- I HAVEN'T SEEN
THE LOG SHEETS, SO I DON'T KNOW
THE DETAILS, BUT THERE WERE LOG
SHEETS PRESENTED TO THE TRIAL
COURT.
AND, OF COURSE, THE DETECTIVES
TESTIFIED THOSE ARE LaFORTE'S
OFFICIALS ON THE FIRST BAG THAT
CONTAINED EVERYTHING, AND THERE
ARE POWERS' INITIALS THAT ARE ON
THE BAG AT FDLE.
DATES, INITIALS, EVERY STEP DOWN
THE CHAIN OF CUSTODY FROM THE
POINT THAT LaFORTE SEIZED THE
EVIDENCE TO SEVEN O'STEEN AND
LaFORTE TOOK IT OVER TO FDLE.
POWERS INITIALLING THE BAG, THE
NEW BAGS THAT THE EVIDENCE WAS
SEPARATED INTO, BUT THE BOTTOM
LINE IS AFTER MURRAY 2, THE
STATE LEARNS FROM THIS COURT'S
OPINION.
WE'VE GOT TO FILL IN THE GAP.
THERE AREN'T ANY CHANGED FACTS,
WE JUST PROVIDED THE COURT WITH
ADDITIONAL INFORMATION AS TO HOW
THESE ITEMS GOT SEPARATE.
THAT IS THEY WERE SEPARATED
BECAUSE THE LOTION WAS GOING TO
FINGERPRINTS, JOHN WILSON, AND

THE GARMENT AND ALL THE BAGS
THAT WERE ASSOCIATED WITH THE
GARMENT WERE GOING TO TRACE
EVIDENCE, THAT IS DR. WARNIMENT.
AND THE DOCTOR TESTIFIED IN
TERMS OF THE CHAIN OF CUSTODY,
MS. HANSON TESTIFIED IN TERMS OF
CHAIN OF CUSTODY BECAUSE THAT
WAS WAS THE PERSON AT FDLE WHO
BROUGHT THE BAG CONTAINING THE
GARMENT AND THE REMNANT BAGS, IF
YOU WOULD, ASSOCIATE WITH THE
THE --
>> YOU KEEP ON SAYING "GARMENT."
>> IT'S A NIGHTIE OR --
>> OKAY.
>> RIGHT.
WHICH EVENTUALLY DR. WARNIMENT
DOES HER PAPER FOLD AND GETS THE
PUBIC HAIRS THAT CONTAIN THE
PUBIC HAIR THAT'S LATER
IDENTIFIED --
>> WHAT WAS THE EXPLANATION, IF
ANY, ABOUT THE INITIALS ON STATE
WITNESS BEING ON ONE OF THE
MATERIALS, AND THEN THAT WITNESS
TESTIFYING, "I DIDN'T WRITE
THOSE INITIALS?
THAT'S NOT MY HANDWRITING."
>> OH, YOU'RE TALKING ABOUT
DR. DIZINNO.
HE TESTIFIES --
>> THE OPPONENT SAYS THAT HIS
INITIALS WERE THERE, BUT THAT HE
TESTIFIED, "I DID NOT PUT MY
INITIALS ON THERE, I DON'T KNOW
HOW THAT GOT THERE.
THAT'S NOT MY WRITING."
>> THAT'S NOT CORRECT, YOUR
HONOR.
>> OKAY, WELL --
>> IN 1998, THE TRIAL IN 1998
WHICH PART OF THIS RECORD IS
SUPPLEMENTED, THE DOCTOR
TESTIFIED IN 1998 THAT, YES,
THOSE ARE MY INITIALS, BUT I DID
NOT WRITE MY INITIALS ON THERE,
AN EVIDENCE TECHNICIAN WROTE MY
INITIALS ON THERE.
SOMEBODY WHO WORKS FOR ME.
IN OTHER WORDS, THIS IS MY CASE,
THIS IS MY ANALYSIS, AND THIS
TECHNICIAN WORKS FOR ME, SO THE
TECHNICIAN PUTS MY INITIALS --

THOSE ARE MY INITIALS, BUT
THAT'S NOT MY HANDWRITING.
THIS IS MY CASE.
AND THAT WAS '98 AND '99.
>> YOUR OPPONENT MAKES LIKE IT
WAS A FORGERY.
SO YOU'RE SAYING THAT THAT'S NOT
THE CONTEXT THAT IT WAS
PRESENTED IN, THAT HE -- DID HE
SAY THAT THAT WAS ROUTINELY
DONE, THAT OTHER PEOPLE IN THE
LAB --
>> THAT WAS THEIR PROCEDURE,
YES, SIR.
>> THEY PUT MY INITIALS ON IT?
>> HE SAID I MAY PUT MY INITIALS
ON THERE, MY TECHNICIAN MAY PUT
MY INITIALS ON THERE.
BASICALLY, IT'S MY CASE AND THE
TECHNICIAN IS MOUNTING THE SLIDE
FOR ME TO WORK ON.
MY TECHNICIAN UNDER MY
SUPERVISION IS MOUNTING THE
SLIDES FOR ME TO WORK ON.
NOW WHAT HAPPENED, I THINK
EARLIER, IS HE TESTIFIED THAT
THOSE ARE MY INITIALS, AND
EVERYBODY ASSUMED THAT BY SAYING
THAT HE WAS THE ONE WHO WROTE
IT.
BUT BASICALLY WHAT WE HAVE IN
1998 AND 1999 IN THOSE TRIALS AS
WELL AS THIS TRIAL IS THE DOCTOR
TESTIFIES THAT, WELL, MY
INITIALS CAN BE ON THERE, BUT
THAT DOESN'T NECESSARILY MEAN
THAT I ACTUALLY HANDWROTE MINE.
IT MEANS IT'S MY CASE, AND
THERE'S AN EVIDENCE TECHNICIAN
WHO WORKS WITH ME TO MOUNT THE
SLIDE FOR ME TO ANALYZE.
SO, I MEAN, THERE'S NO
INDICATION OF FORGERY OR THERE'S
NO EVIDENCE THAT THIS BROKE FROM
THE STANDARD OPERATING
PROCEDURE.
>> IS THIS RECORD CLEAR IN THIS
TRIAL, THIS FOURTH TRIAL, THAT
IS WHAT HE SAID, THAT THAT'S MY
INITIALS.
I DIDN'T PUT 'EM ON THERE, BUT
SOMEONE DID AT MY DIRECTION?
>> IN FACT, YES, YOUR HONOR.
IN FACT, IN THE -- ONE OF THE

EARLIER TRIALS, I'VE FORGOTTEN
WHETHER IT WAS '98 OR '99, HE
THOUGHT IT WAS PAULA FRAZIER --
>> NO, I WANT WHAT IS --
>> THIS TRIAL.
IN THIS TRIAL HE SAID, NO,
ACTUALLY, I LOOKED AT THE
INITIALS AGAIN, AND I CONSULTED
WITH SOME OF MY COLLEAGUES, AND
WE DECIDED IT WAS ANOTHER
TECHNICIAN WHO WORKED WITH ME BY
THE NAME OF MS. MOORE.
>> BUT HE SAID AND EXPLAINED
THAT THAT WAS COMPLETELY
INNOCENT.
>> YES, SIR.
ABSOLUTELY.

>> ALL RIGHT.
>> NOTHING HOKEY ABOUT IT.
>> ONE OF THE OTHER MAJOR POINTS
THAT YOUR ADVERSARY POINTS OUT
IS THAT STARTING WITH THE
WITNESS WHO COLLECTED THE HAIRS
TO BEGIN WITH AND SAID I TOOK
ONE HAIR FROM HERE AND ONE HAIR
FROM THERE OR WHATEVER, LATER
SAID I CHANGED MY TESTIMONY.
NOW, CLEARLY ONE IMPLICATION
FROM THAT IS THAT HE HAS
FABRICATED HIS TESTIMONY, THAT
HE'S -- NOW THAT HE'S SEEN THE
NEED, THAT EVERYBODY'S SAYING
THERE WERE MORE HAIRS TESTED
THAN JUST TWO, THAT HE'S CHANGED
HIS TESTIMONY TO SUIT WHAT
SOMEBODY ELSE HAS SAID.
SO HELP US WITH THIS BECAUSE
THOSE WORDS ARE THERE WHERE HE
SAYS THEN I CHANGED MY TESTIMONY
OR SOMETHING.
SO I'M ON THE FACE OF IT, OKAY,
THAT CERTAINLY APPEARS VERY
CONSPIRATORIAL AND SUSPICIOUS.
SO WOULD YOU PLEASE EXPLAIN TO
US IF THERE IS AN INNOCENT
EXPLANATION TO THAT.
>> ALL FROM THE 1994 TRIAL, '98
TRIAL, '99 TRIAL AND THE 2003
TRIAL WHICH WE'RE HERE ON TODAY
CHANGED HIS TESTIFY AND HIS
DEPOSITION IN HIS 1991
DEPOSITION WHICH THE STATE
SUPPLEMENTED WITH, ALL ALONG

CHASE HAS NOT BEEN CERTAIN AT THE NUMBER OF HAIRS.
IF PINNED DOWN HE'LL SAY, WELL, AS FAR AS I'M CONCERNED, IT WAS A HAIR FROM HERE AND A HAIR FROM HERE, BUT WHEN HE'S PINNED DOWN, WELL, I DIDN'T LOOK AT IT THROUGH THE MICROSCOPE.
WELL, I DIDN'T LOOK AT THAT, I GOT A TWEEZERS, AND I SAW HAIR ON THE LEG OF THE VICTIM, AND I SAW A HAIR ON THE CHEST OF THE VICTIM, AND I GRABBED IT WITH A TWEEZERS.
I DIDN'T TRY TO PULL IT APART TO SEE IF THERE WAS MORE THAN ONE, THIS IS WITH ALL THE TRIALS INCLUDING THIS ONE.
NOW, IN GETTING TO YOUR QUESTION, YOUR HONOR, IN 2003 ON CROSS-EXAMINATION COUNSEL ASKED CHASE, WELL, DID YOU -- WHY DID YOU -- WHY ARE YOU USING THE WORD "SAMPLES" NOW?
I MEAN, THAT WAS THE OPERATIVE WORD.
IN 2003 HE TESTIFIES I GOT A SAMPLE FROM HERE AND A SAMPLE FROM THERE.
>> IT'S DIFFICULT TO, FOR ME AT LEAST, TO UNDERSTAND WHETHER OR NOT YOU PICKED UP ONE HAIR VERSUS YOU MAY HAVE PICKED UP A LOT OF HAIRS.
WITH A TWEEZER DID HE PULL IT FROM THE BODY OR OFF OF THE BODY?
I MEAN --
>> THEY WERE LAYING ON THE BODY.
>> YOU SAID IT WAS ON THE LEG.
WAS IT A HAIR ON THE LEG, OR WAS HE PULLING --
>> NO, MA'AM.
THE HAIRS WERE JUST LAYING ON THE VICTIM'S BODY.
>> I MEAN, WE KNOW IT'S NOT HER HAIR.
>> RIGHT.
EXACTLY.
>> THAT'S WHY HE PICKED IT UP WITH A TWEEZER.
>> RIGHT.
>> DO YOU KNOW WHAT COLOR THE HAIR WAS?

>> IT WAS PUBIC HAIR, BUT --
>> THE REASON IT'S IMPORTANT TO ME, I MEAN, WE'RE ALL GROWN-UPS HERE.
A DARK PUBIC HAIR, IT'S PRETTY EASY TO SEE THE DIFFERENCE BETWEEN ONE PUBIC HAIR OR 15 PUBIC HAIRS.
THAT'S NOT LIKE A, OH, I JUST GOT ONE.
FOR ALL OF US THAT TWEEZE, WE UNDERSTAND, SO IT DOESN'T MAKE A LOT OF SENSE THAT WE'RE DEALING WITH PUBIC HAIRS WHICH IS DISTINCTIVE WHETHER THEY'RE BLOND OR DARK, IF THEY'RE DARK -- THAT'S WHY I ASKED THE QUESTION.
>> RIGHT.
>> SEEING ONE VERSUS SEEING TEN, THAT'S NOT A CLOSE ISSUE ON -- AS FAR AS I'M CONCERNED.
THAT'S WHAT MADE ME CONCERNED ABOUT IT.
AND I'M WE'RE NOT TALKING ABOUT A FINE, BLOND HAIR FROM SOMEBODY'S --
>> WELL, I MEAN, YOU'VE GOT AN EVIDENCE TECHNICIAN OR EVIDENCE TECHNICIANS PROCESSING A MASSIVE CRIME SCENE.
I DON'T KNOW IF YOU LOOKED AT THE PICTURES, SO HE SEES WHAT APPEARS TO BE A HAIR HERE, GETS TWEEZERS, GRABS THEM, AND PUTS THEM IN AN ENVELOPE.
>> BUT IT'S LIKE OUT OF A DISNEY MOVIE THAT, VOILA, SOMEWHERE DOWN THE ROAD WE'VE GOT TESTIMONY THAT MIGHT HAVE BEEN IN THE 30s, THAT IS THAT THERE MIGHT HAVE BEEN 30-SOME HAIRS --
>> WELL, I DON'T THINK THERE'S ANY EVIDENCE --
>> SO HELP US.
WHAT WE'RE SAYING IS, YOU KNOW, THAT IS VERY, VERY CONFUSING GIVING THE STATE THE BENEFIT OF THE DOUBT.
SO GIVE US YOUR BEST SHOT OF HOW WE ENDED UP WITH A WITNESS THAT YOU READ HIS TESTIMONY, AND HE SAYS A HAIR HERE AND A HAIR HERE, AND I'M TALKING ABOUT TWO

HAIRS, AND ALL OF A SUDDEN WE END UP WITH A NET RESULT UP AT THIS FBI LAB THAT, OH, I DON'T KNOW, IT MAY HAVE BEEN UPWARDS OF IN THE 30s.
>> NO, SIR.
>> FROM THOSE TWO SAMPLES. SO HELP US TO GET FROM ONE TO THE OTHER, OR WHERE ARE WE ON THAT?
>> FIRST OF ALL, AT THE BACK END THE DOCTOR TESTIFIES ALL THE WAY THROUGH ALL THESE TRIALS, INCLUDING THIS TRIAL, I DON'T COUNT HAIRS.
>> BUT HE KNEW THERE WERE NEVER TWO HAIRS.
>> RIGHT.
HE TESTIFIES THERE'S MORE THAN TWO, AND IT'S 5-21.
>> 5-21.
>> HE SAYS SEVERAL, AND HE SAID GENERALLY WHAT I MEAN BY THAT -- AND I USED SEVERAL TWICE, SO HE SAID I MUST HAVE BEEN TALKING ABOUT 5-21 WOULD BE MY GUESSTIMATE.
>> IS THAT UNREASONABLE ON ITS FACE FOR A SO-CALLED EXPERT, OKAY, THAT YOUR OPPONENT SAYS THE DEATH PENALTY IS GOING TO REST ON WOULD SAY I DON'T COUNT HAIRS?
ISN'T THAT UNREASONABLE ON ITS FACE?
>> NO, SIR --
>> FOR A COURT TO ACCEPT THAT THIS IS GOING TO BE TAKING TESTIMONY IN A FIRST-DEGREE MURDER CASE WITH THE DEATH PENALTY HANGING IN THE BALANCE THAT I DON'T COUNT HAIRS?
>> WELL, THAT'S BEEN THE TESTIMONY ALL ALONG, YOUR HONOR, IN ALL FOUR TRIALS.
>> HAS IT BEEN THE TESTIMONY OF THAT INITIAL WITNESS THAT SAID I TOOK A HAIR HERE AND A HAIR THERE, I HAD TWO HAIRS?
>> HE HAS TESTIFIED THAT WAY -- THERE ARE NUGGETS OF THAT ALL THE WAY THROUGH ALL THE TRIALS. BUT WHEN PINNED DOWN, HE SAYS I THINK, I'M NOT SURE, I JUST USED

TWEEZERS --
>> THAT'S LIKE THE STATE IMPEACHING ITS OWN WITNESS IN ORDER TO FIND A WEAKNESS IN IT AND THEN TO SAY, WELL, NOW THAT WE'VE IMPEACHED HIM, IT'S CONSISTENT WITH WHAT THIS EXPERT AT THE FBI LAB IS SAYING.
I'D JUST LIKE A BETTER EXPLANATION, AGAIN, OF HOW WE CAN GO FROM THE PERSON THAT COLLECTED THE HAIRS SAYING HOW MANY THERE WERE TO HOW WE END UP WITH THIS, YOU KNOW, TWO OR THREE DOZEN.

>> THERE'S ALWAYS BEEN, AND WHAT MURRAY 2 DEALT WITH, THIS COURT DEALT WITH IS THAT CHASE HAS NEVER CATEGORICALLY TESTIFIED WITHOUT ANY EQUIVOCATION AS TO THE NUMBER OF HAIRS AND NEITHER DID DR. DIZINNO AT THE BACK END.
AND MURRAY 2 HELD BECAUSE WE DIDN'T HAVE A DISCREPANCY IN THE NUMBER OF HAIRS -- I THINK WHAT WE'RE LOSING SIGHT OF IN COUNTING THESE HAIRS, TWO POINTS I WANT TO MAKE ON THIS ISSUE.
ONE IS THAT WE HAVE TESTIMONY, UNREBUTTED TESTIMONY, THAT CHASE -- WHATEVER HE GRABBED HERE AND GRABBED HERE, HE PUT IN AN ENVELOPE AND SEALED.
>> AGAIN, I WANT TO JUST --
WE'RE NOT GRABBING, WE HAVE A MALE PUBIC HAIR ON A --
>> BY EYE.
>> HUH?
>> BY EYE.
HE SEES WHAT APPEARS TO BE BY HIM --
>> IT'S NOT, PUBIC HAIRS AREN'T MICROSCOPIC.
WE'RE NOT TALKING ABOUT GETTING SKIN RUBBINGS OFF SOMEBODY, WE'RE TALKING ABOUT PUBIC HAIRS WHICH ARE COUNTABLE.
>> WELL, WE DON'T KNOW --
>> AND THEN THE GUY, THE FBI GUY SAYS I DON'T COUNT HAIRS, BUT THEN HE SAYS 5-21.
21 IS SOMETHING.
YOU'D SAY I GOT A FEW HAIRS, BUT

HE THEN CAME UP WITH A NUMBER 5-21.
HOW MANY WERE THERE ULTIMATELY?
>> ACTUALLY, I DON'T THINK WE KNOW, JUSTICE PARIENTE.
>> CAN I ASK ONE QUESTION, IF THE CONCLUSION IS THAT THERE'S A PROBLEM WITH Q42, THEN WHAT IS THE EVIDENCE THAT WE'RE LEFT WITH FROM A Q20?

>> WELL, WE STILL HAVE THE TESTIMONY OF DR. DIZINNO, ESSENTIALLY THE SAME TYPE OF TESTIMONY THAT Q20 IS CONSISTENT WITH THE PUBIC HAIRS OF MURRAY.
>> OKAY [INAUDIBLE] Q42 AND Q20 ARE BOTH CONSISTENT --
>> WITH EACH OTHER --
>> THAT'S THE TESTIMONY.
>> YES, YOUR HONOR.
>> AND SO THAT IF YOU LOSE Q42, IT'S JUST AN ADDITIONAL EVIDENCE, THAT YOU'LL STILL HAVE THE SAME UNDER Q20 AS TO THE CONSISTENCY.
>> ABSOLUTELY, YES, YOUR HONOR.
>> AND THEN THAT BASICALLY IS WHAT WE'VE HEARD THIS MORNING, IS THAT IS THE ONLY DIRECT EVIDENCE, IF THAT'S DIRECT, CIRCUMSUBSTANTIAL TO PLACE THIS INDIVIDUAL AT THE SCENE OTHER THAN -- DIRECTLY WITHIN THE HOME.
THE OTHERS ARE IN THE NEIGHBORHOOD, OUT OF THE GARAGE --
>> ANTHONY SMITH TESTIFYING THAT MURRAY CONFESSED TO HIM AND GAVE DETAILS AS TO MURRAY HOLDING THE KNIFE FIRST WHILE TAYLOR RAPED THE VICTIM, AND THEN HIM HANDING THE KNIFE OVER TO TAYLOR AND HE OBTAINING ORAL SEX FROM THE VICTIM WHILE TAYLOR HELD A KNIFE ON HER RANSACKING THE PLACE, HELPING TAYLOR CHOKE THE VICTIM TO DEATH WITH THE CORD, THOSE DETAILS.
>> AND THAT COMES FROM THE --
>> THAT'S ANTHONY SMITH.
YES, MA'AM.
AND, OF COURSE --

>> THE ESCAPEE, THE PERSON THAT HE ESCAPED WITH, AND THEN HE GIVES THE DETAILS TO.
CO-DEFENDANT HAS BEEN CONVICTED OF MURDER AND THE DEATH PENALTY AND HIS CONVICTIONS HAVE BEEN UPHELD.

>> I ASSUME IT'S BEEN UPHELD, BUT I DON'T KNOW THAT -- I ASSUME IT HAS, YES, MA'AM.
BUT WE ALSO HAVE THE STATEMENTS --
>> EXCUSE ME.
WHAT ABOUT THERE'S ALLEGEDLY SOME STATEMENT MADE TO THE POLICE THAT MR. MURRAY MAKES TO THE POLICE.
WHAT KIND OF DETAIL WAS IN THIS STATEMENT TO THE POLICE?
BECAUSE I HEARD YOU REFERENCE IT --
>> YES, YOUR HONOR.
I MEAN, WE HAVE, WE HAVE HIS CONFESSION TO ANTHONY SMITH --
>> WELL, WE HAVE THAT.
I'M TALKING ABOUT THE POLICE STATEMENT.
>> HE'S WITH TAYLOR BEFORE AND AFTER THE MURDER, HE ESCAPES AND CONFESSES, AND THAT'S ALSO CORROBORATED BY THE BELLSOUTH RECORD --
>> I'M ASKING YOU WHAT IS IN THE POLICE STATEMENT.
>> YES, YOUR HONOR.
AND HE'S INTERVIEWED BY DETECTIVE OSTEEN.
THE DETECTIVE TELLS MURRAY THAT WE HAVE A MATCH ON YOUR HAIR.
AND TAYLOR -- EXCUSE ME, MURRAY RESPONDS, WELL, "YOU SHOULD HAVE GOTTEN THE RESULTS BACK LAST YEAR."
HE DOESN'T DISPUTE THAT IT'S HIS HAIR AT ALL.
I MEAN, THIS IS ALSO PART OF THE HARMLESS ERROR ARGUMENT.
MURRAY DOESN'T DISPUTE IT'S HIS HAIR AT ALL, IN FACT, HE TRIES TO EXPLAIN WHY HIS HAIR WOULD BE AT THE -- HE SAYS, WELL, I MUST HAVE PUT REEFER IN MY CROTCH, AND THAT'S HOW MY PUBIC HAIR

ENDED UP AT THE SCENE.
AND THEN THE DETECTIVE QUESTIONS THAT EXPLANATION, AND HE SAID, WELL, I ASSOCIATE WITH TAYLOR, AND SO MY PUBIC HAIR MUST HAVE GOTTEN ON HIS CLOTHING, AND IT MUST HAVE FALLEN OFF OF TAYLOR AT THE CRIME SCENE.
HE DIDN'T DISPUTE WHEN CONFRONTED WITH HIS HAIR AT THE SCENE, MURRAY DOES NOT DISPUTE THAT HIS HAIR'S THERE WHICH WOULD BE THE NATURAL THING TO DO.
ALSO HE TELLS DETECTIVE O'STEEN THAT, WELL, TAYLOR TOLD ON HIMSELF BY, IF I MAY USE THE TERMS HE USED, "COMING IN THE VICTIM."
>> [INAUDIBLE] ISSUE OF HARMLESS ERROR.
WAS THAT RAISED IN THE LAST MURRAY CASES?
IN OTHER WORDS, WE HAD ISSUES ABOUT PHYSICAL EVIDENCE, AND I -- WE REVERSED, BUT DID THE STATE TRY TO RAISE EVEN IF IT'S HARMLESS ERROR BEFORE?
>> I DON'T KNOW THE ANSWER TO THAT.
>> I SUSPECT -- IS THAT NOT -- DID THEY PUT ON MORE EVIDENCE IN THIS CASE OTHER THAN THE HAIR? DID THEY PUT MORE NONPHYSICAL EVIDENCE ON?
WERE THERE OTHER WITNESSES THAT TESTIFIED IN THIS CASE THAT HADN'T TESTIFIED PREVIOUSLY?
>> I DON'T BELIEVE SO, NO, YOUR HONOR.
I THINK THERE WAS SOME TESTIMONY AS TO A STOLEN WHITE DURANGO IN THE OTHER TRIAL, TOO, WHICH WAS PERIPHERY TO WHAT WE'RE TALKING ABOUT HERE, BUT THE EVIDENCE WAS SUBSTANTIALLY THE SAME BETWEEN THE TWO TRIALS EXCEPT THE DNA WHICH, AS THE COURT KNOWS, WE DID NOT USE IN THIS CASE, AND WE DID USE IN THE OTHER CASE AND THIS COURT REVERSED ON.
>> THAT WAS WE REVERSED ON THE FIRST OR SECOND CASE?
>> COURT REVERSED ON DNA IN TWO

CASES, MURRAY 1 AND MURRAY 2.
THERE WERE DIFFERENT PROBLEMS,
AND THE DNA WAS REDONE, AS I
UNDERSTAND, BUT OF COURSE, WE
DON'T HAVE DNA IN THIS CASE.
BUT GETTING BACK TO SAMPLES.
I AM NOT CONCEDING THAT POINT
BECAUSE IN THE 1991 DEPOSITION
BASICALLY WHAT CHASE'S PROBLEM
IS, HE MISRECOLLECTED WHAT HE
TESTIFIED IN THE PAST.
THAT WAS HIS MISRECOLLECTION
BECAUSE IN A 1991 DEPOSITION ON
TAYLOR WHICH THE STATE
SUPPLEMENTED, CHASE SPECIFICALLY
ADOPTED THE WORD "SAMPLES" WHEN
HE WAS TALKING ABOUT GETTING
HAIR FROM HERE AND GETTING HAIR
FROM THERE.
IN OTHER WORDS, HE DIDN'T COME
UP WITH THIS JUST FOR THE 2003
TRIAL ON REVIEW HERE WHICH IS
THE IMPLICATION OR THE ARGUMENT
OF MY OPPONENT.
CHASE HAS TESTIFIED SINCE 1991
AS TO SAMPLES.
HE DIDN'T CHANGE HIS TESTIMONY.
>> WAS THAT HIS FIRST
DEPOSITION?
IN THE CASE?

>> I WANT TO SAY YES, BUT I HAVE
NOT REVIEWED ALL OF THE
DEPOSITIONS.
IT IS A DEPOSITION, AND IT WAS
FOR TAYLOR, AND HE DID TESTIFY
AS TO "SAMPLES" IN '99 BEFORE
THE VERY FIRST TRIAL OF MURRAY.
SO HE DID NOT, CONTRARY TO HIS
TESTIMONY IN THIS TRIAL, CHASE
IS WRONG.
I MEAN, ABOUT HIM COMING TO THE
TERM "SAMPLES" HAVING BEEN MADE
AWARE OF THE FACT THAT THERE ARE
MORE HAIRS.
BY THE WAY, THAT'S NOT DEVELOPED
IN THE RECORD AND, THEREFORE,
NOT PRESERVED THAT THE STATE DID
ANYTHING WRONG.
I MEAN, WE CAN ADDRESS THAT
POSTCONVICTION, PERHAPS, BUT
BASICALLY THAT ARGUMENT WAS NOT
PRESERVED BELOW, AND THE
PROSECUTOR DIDN'T HAVE A CHANCE

TO ADDRESS IT BECAUSE IT WASN'T RAISED BELOW.
THE STATE WILL BE HAPPY TO ADDRESS THAT AT THE APPROPRIATE TIME WHEN IT'S RAISED IN A PROPER VENUE.
>> I'D LIKE TO ASK, UNLESS -- I'D LIKE TO ASK ONE QUESTION THAT'S NOT RELATED TO THESE, THE HAIRS WHICH HAS TO DO WITH SOMETHING THAT HAPPENED IN THE PENALTY PHASE WITH THE JURORS.
AND IT HAS TO DO WITH JUROR STARKEY --
>> YES, MA'AM.
>> -- WHO SAID THAT THERE HAD BEEN PRAYER A FEW MORNINGS IN THE JURY ROOM.
AND SOME MEMBER ASKED A BAILIFF IT WAS ALL RIGHT TO HAVE PRAYER.
THE BAILIFF SAID IT WAS OKAY AS LONG AS EVERYONE GREED.
DOES THE STATE USE THAT THE BAILIFF IN THIS CASE AS THE -- THAT THAT, IN FACT, TOOK PLACE, THAT IS THAT JUROR STARKEY TALKED TO A BAILIFF WHO WORKS FOR THE COURT SYSTEM, AND THE BAILIFF SAID IT WAS ALL RIGHT TO PRAY EVERY MORNING IN THE JURY ROOM?

>> THE TRIAL COURT HAS ENTERED A WRITTEN ORDER ON THIS, AND -- WELL, IN TERMS OF THE, OF THE PRAYER, THE STATE DISPUTES --
>> THE STATE DISPUTES THAT THERE WAS PRAYER IN THE JURY ROOM?
>> NO, MA'AM.
THE JURORS WERE CALLED IN -- ON MOTION OF DEFENSE WERE CALLED IN ONE AT A TIME, AND THE JUDGE ASKED THEM IF THERE WERE ANY PRAYERS AND WHAT WAS THE NATURE, AND THEY CONFIRMED THERE WERE A COUPLE OF PRAYERS FOR GENERAL GUIDANCE.
NOTHING THAT WOULD IN ANY WAY -- NO MORE THAN "GOD SAVE THIS HONORABLE COURT," BASICALLY --
>> YOU AGREE IF A QUESTION FROM THE JURY IS ASKED WHETHER THIS IS IN THIS CASE, THAT WE DON'T WANT BAILIFFS TELLING JURORS

THAT THEY CAN GO AHEAD AND PRAY.
WE DON'T KNOW WHAT THEY MIGHT BE PRAYING ABOUT, A BAILIFF IN THAT SITUATION OUGHT TO BRING THAT TO THE ATTENTION OF THE TRIAL JUDGE.
>> YES, YOUR HONOR --
>> DO YOU AGREE WITH THAT?
>> I AGREE WITH IT IN TERMS OF A PROPER --
>> ROLE FOR THE BAILIFF.
>> YES, MA'AM.
IT SHOULD BE ADDRESSED TO THE TRIAL COURT, TO THE JUDGE, BUT AS TO THE -- I DON'T BELIEVE -- THE TRIAL COURT FOUND THAT THE PRAYERS DIDN'T MAKE ANY DIFFERENCE.
I MEAN, THAT IT WAS JUST A PRAYER OF GENERAL GUIDANCE, AND, THEREFORE, IT WASN'T OF ANY CONSEQUENCE IN TERMS OF AFFECTING THE VERDICT.
IN FACT, EACH JUROR CONFIRMED THAT THEY FOUND THE DEFENDANT GUILTY BASED ON THE EVIDENCE, AND THE EVIDENCE ESTABLISHED THAT THE DEFENDANT WAS GUILTY BEYOND A REASONABLE DOUBT AND NOT BASED ON ANY PRAYER OR ANYTHING ELSE THAT THEY SHOULD NOT HAVE CONSIDERED.
>> HERE'S ANOTHER JURY ISSUE THAT WASN'T DISCUSSED BUT THAT THERE'S AN ISSUE HERE ABOUT THE STRIKING OF A JUROR AND THE PROSECUTOR BASICALLY SAYS HE WAS AMBIVALENT ABOUT THE DEATH PENALTY, AND THAT'S WHY HE WAS STRIKING HIM EXCEPT AS I READ THAT JUROR'S ANSWERS, IT DOESN'T SEEM THAT THE JUROR WAS ACTUALLY AMBIVALENT ABOUT THE DEATH PENALTY.
BUT THE JUDGE SAID, WELL, I'M GOING TO DO IT ANYWAY BECAUSE THERE'S BEEN NO PATTERN SHOWN OF STRIKING BLACK JURORS.
IS THAT THE STANDARD, THAT YOU'VE GOT TO SHOW A PATTERN?
EVEN IF THEY ASKED FOR RACE-NEUTRAL REASON, HE SAYS HE'S AMBIVALENT ABOUT THE DEATH PENALTY.

THE DEFENSE SAYS HE WASN'T
AMBIVALENT, AND THE JUDGE SAYS
I'M GOING TO ALLOW THE STRIKE
BECAUSE NO PATTERN.
>> ACTUALLY, THAT WAS THE
INITIAL DETERMINATION, JUSTICE
QUINCE, BUT THEY REVISITED A FEW
PAGES LATER IN THE TRANSCRIPT,
AND THE JUDGE AT THAT TIME FOUND
THAT ESPECIALLY BECAUSE, DIDN'T
SAY PATTERN, BUT ESPECIALLY
BECAUSE THE PROSECUTION DID NOT
STRIKE TWO AFRICAN-AMERICAN
JURORS WHO DID SIT ON THE JURY,
IT WAS MS. HOBBS AND MS. RAMSEY,
I WILL FIND THAT THE STATE'S
REASON IS RACE-NEUTRAL.
SO THE TRIAL COURT --
>> THERE WAS NO PATTERN.
>> WELL, I MEAN, HE SAID
ESPECIALLY, BUT HE DID FIND THAT
THE PROSECUTOR'S REASON WAS
GENUINE, WHICH IS WHAT HE WAS
SUPPOSED TO DO.
BUT HE LOOKED AT IT IN THE TOTAL
CONTEXT THAT THE PROSECUTOR NOT
STRIKING AFRICAN-AMERICANS IS A
STRONG FACTOR TO CONSIDER IN
TERMS OF GENUINENESS OF THE
PROSECUTOR'S REASON.

>> I THOUGHT WE WERE SUPPOSED TO
LOOK AT THIS AS TO EACH
INDIVIDUAL JUROR AND NOT WHETHER
OR NOT SOME OTHER JUROR SAT AND
WAS NOT STRICKEN.
I THOUGHT WE WERE TO LOOK AT
THIS ON AN INDIVIDUAL BASIS.
>> WELL, THE KEY COMPONENT,
THOUGH, YOUR HONOR, IS THE
GENUINENESS, THE RACE-NEUTRAL
GENUINENESS OF THE PROSECUTOR'S
REASON, AND THE BURDEN IS ON THE
OTHER SIDE, THE NONPREVAILING
PARTY, TO SHOW THE TRIAL COURT'S
RULING WAS CLEARLY ERRONEOUS.
>> WEREN'T THERE WHITE JURORS
THAT WERE, IN FACT, AMBIVALENT
THAT WERE STRICKEN?
>> I WOULD DISAGREE WITH THAT
CHARACTERIZATION, YOUR HONOR.
I BELIEVE IT WAS VIRGINIA RENNIE
WHO WAS -- I MEAN, THEY DIDN'T
DISCUSS HER RACE, BUT BECAUSE

THEY DIDN'T DISCUSS IT, I HAVE
ASSUMED SHE WAS A WHITE FEMALE
BECAUSE, IN FACT, THE JUDGE IS
THE ONE THAT BROUGHT UP
MR. JONES AS BEING AN
AFRICAN-AMERICAN.
HE'S AFRICAN-AMERICAN,
PROSECUTOR, YOU BE ABLE TO GIVE
ME A REASON.
SO NOTHING WAS DISCUSSED AS TO
MS. RENNIE'S RACE WHICH TO ME
MEANS SHE WAS A WHITE FEMALE,
AND SHE, IN FACT, INDICATED
AMBIVALENT FEELS, AND YOU
COMPARE HER EXPRESSION OF
AMBIVALENCE WITH MR. JONES WHO
WENT ON WITH MULTIPLE WHETHER
THIS OR WHETHER THATS, I MEAN,
HE DIDN'T USE THE WORD
"DEPENDS," BUT MY POINT IS THAT
AS TO VIRGINIA RENNIE, SHE
DIDN'T GIVE A NUMBER WHICH WAS
ONE OF THE PROSECUTOR'S
RACE-NEUTRAL REASONS, THE NUMBER
IN TERMS OF SUPPORT OF THE DEATH
PENALTY, AND MS. RENNIE ALSO
ADMITTED --
>> AND SHE WAS STRICKEN?
>> AND SHE WAS STRICKEN BY THE
PROSECUTOR PREEMPTORILY.
THERE WERE SOME OTHER FACTORS
PERTAINING TO HER SAYING --
>> I GUESS MY CONCERN WAS THAT
THE JUDGE MISRECOLLECTED WHAT
THE ANSWERS WERE.
HE THOUGHT THAT THE JUROR WAS
MUCH MORE UNEQUIVOCAL ABOUT THE
DEATH PENALTY.
WOULD YOU AGREE THAT THAT -- THE
TRIAL COURT INITIALLY DID NOT,
HE THOUGHT THAT WHEN HE WAS
DENYING THE STRIKE THAT HE HAD
INDICATED FEELINGS AGAINST THE
DEATH PENALTY WHEN THAT WAS NOT
THE CASE?

>> THE PROSECUTOR -- ACTUALLY
TWO PROSECUTORS WERE DISCUSSING
THIS AT THE TIME, AND ONE
PROSECUTOR INITIALLY SPOKE UP
AND THEN MR. KALEEL, THE OTHER
PROSECUTOR SPOKE UP, AND
BASICALLY THEIR POSITION WAS
THAT MR. JONES, THE

AFRICAN-AMERICAN MALE, INDICATED HIS SUPPORT OF THE DEATH PENALTY "DEPENDS," AND MR. JONES DIDN'T USE THE WORD "DEPENDS," BUT IF YOU LOOK AT HIS ENTIRE ANSWER ON PAGE 137 OF THE TRANSCRIPT, HE USES MULTIPLE QUALIFICATIONS AND BASICALLY DIDN'T REALLY GIVE A CLEAR ANSWER IN TERMS OF THE QUESTION.
DANCES ALL AROUND IT, WHICH TO ME IS EQUIVOCATION AND SUPPORTS THE GENUINENESS OF THE PROSECUTOR'S REASON.
I SEE I'M OUT OF TIME.
[LAUGHTER]
AND THE STATE WOULD ASK YOU TO AFFIRM.
THANK YOU.
>> [INAUDIBLE] REBUTTAL?
>> PLEASE.
AND, JUSTICE PARIENTE, IT DAWNED ON ME, ABSOLUTELY, THERE WAS TESTIMONY REGARDING THE COLOR OF THE HAIR, AND THAT COLOR WAS DARK.
IF YOU'LL LOOK AT THE DETECTIVE'S TESTIMONY, HE GOES THROUGH AND GIVES SOME OF THE CHARACTERISTICS, AND HE TALKS ABOUT IT BEING DARK AND WAVY.
>> CAN I ASK ONE QUESTION?
>> YES, SIR.
>> YOU'VE DONE A TREMENDOUS JOB AS THE LAWYER IN THIS CASE AND PUTTING THESE THINGS TOGETHER.
AS I MENTIONED BEFORE, AS A TRIAL LAWYER YOU'VE ATTEMPTED TO PUNCH HOLES IN EVERYTHING THAT'S HERE, BUT AS THE LEGAL ANALYSIS THAT WE GO THROUGH, IS IT CORRECT THAT Q42 AND Q20, THE WORST IT IS FOR YOUR CLIENT WOULD BE THAT IT'S HAIR CONSISTENT WITH HIM, FOUND AT THE SCENE?
>> THAT'S CORRECT.
>> BOTH OF THEM IN THAT CATEGORY.
>> CORRECT.
>> AND IF WE WOULD DETERMINE LEGALLY THAT ONLY ONE OF THOSE, Q42 OR Q20, AND IT WOULD LEAVE ONE OF THOSE STILL REMAINING,

THAT WOULD STILL BE EVIDENCE
BEFORE A JURY TO MAKE A
CONCLUSION.
IS THAT A FAIR STATEMENT?
>> THAT'S FAIR.
>> SO FOR YOU TO GET TO THE
POSITION THAT THERE IS NO
EVIDENCE IT WOULD HAVE TO
EXCLUDE BOTH HAIR SAMPLES.
IS THAT A FAIR STATEMENT FROM A
LEGAL POSTURE?
>> YES, YOUR HONOR.
>> OKAY.
>> AND TO ADDRESS THAT AND WHAT
REASON I THINK I CAN DO THAT IF
THE COURT SENDS US BACK INTO
REMAND, NOW THAT I KNOW THE
PROBLEMS WITH THE FBI LAB AND
I'VE LEARNED ENOUGH ABOUT IT
FROM THE REPORT, I WILL MAKE
SURE THAT WE FIND OUT WHAT
HAPPENED IN THERE.
AND IT'LL EITHER BE FINE AND
LEGITIMATE AND WE CAN HAVE A
CONVICTION THAT WE CAN ALL --
>> I'M SORRY.
WHAT WERE YOU SAYING, IF IT WAS
REMANDED YOU WOULD GO BACK --
>> IF THIS WAS REMANDED, I WOULD
ACCEPT THE APPOINTMENT AGAIN,
AND THIS TIME WHEN IT COMES TO
Q20 AND Q42 AND ALL OF THESE
PROBLEMS THAT WE CONTINUE TO
HAVE WITH SIMPLY GETTING THE
EVIDENCE IN AND HAVING A CHAIN
OF CUSTODY AT THE FBI LAB, I
WILL MAKE SURE THAT WE TAKE THE
TIME TO DO EVERYTHING RIGHT.
THE WITNESS --
>> WELL, WAIT A MINUTE, I MEAN,
DO YOU DISPUTE THE FACTUAL
PREDICATE THAT THE INDIVIDUAL
WHO DID THE ANALYSIS PERMITTED
WHOEVER ACCEPTS THE EVIDENCE
INTO THE OFFICE OR LABORATORY TO
AFFIX HIS INITIALS?
I MEAN, WE NEED TO AGREE ON SOME
OF THE FACTS.
>> CERTAINLY.
>> IS THAT THE TESTIMONY THAT
THIS PERSON WHO DOES THE ACTUAL
EXAMINATION, THE OFFICE
PRACTICE?
>> I'LL TRY TO USE MY TIME

WISELY.
HE DID TESTIFY THAT IT'S ROUTINE FOR HIM TO HAVE A TECHNICIAN PUT HIS INITIALS ON THERE.
THE PROBLEM WE HAVE IS THE BOX THAT WENT UP THERE HAD THE EVIDENTIARY HAIRS, BUT IT ALSO HAD MURRAY'S HAIRS IN THERE, AND WE DON'T KNOW WHO OPENED THAT BOX.
>> FOR COMPARISON PURPOSES.
>> EXACTLY.
SO WE DON'T KNOW WHO OPENED THEM, THE NAME EVEN CHANGED FROM TRIAL TO TRIAL, PAULA FRAZIER, ANGELA MOORE.
>> IS THERE SOME EVIDENCE THAT THERE IS SOME KIND OF CO-MINGLING OR WHAT THE EVIDENCE WAS AT THE TIME IT REACHED THE FBI LAB?
>> DETECTIVE CHASE SAYS THERE'S TWO HAIRS.
HE OPENS THEM UP, EXCUSE ME, HE LOOKS AT THE SLIDE.
HE LOOKS, THIS TIME THERE'S BETWEEN 5-21.
>> I UNDERSTAND THAT, BUT WE'RE TALKING ABOUT -- YOU'RE SAYING THAT THE OTHER HAIRS SOMEHOW GOT MOUNTED ON THE SLIDES?
>> I'M SAYING IT'S VERY POSSIBLE, ABSOLUTELY POSSIBLE.
>> WHEN DID THEY TAKE CHEAVIN MURRAY'S HAIR?
>> I DON'T KNOW THE EXACT DATE.
>> WELL, BECAUSE --
>> IT WAS PRIOR TO HIS INDICTMENT.
>> PRIOR TO THE TIME THAT THE, THAT THESE SAMPLES WERE OPENED FOR THE FIRST TIME?

>> I'M NOT POSITIVE OF THE ANSWER.
HERE'S AS BEST AS I CAN RECALL --
>> WHEN WE TALK ABOUT TAMPERING, PUBIC HAIRS --
>> ACTUALLY, THE ANSWER IS, YES.
THEY HAD JOE MURRAY'S HAIRS BECAUSE --
>> YOU ARE QUICKLY OUT OF, RUNNING OUT OF YOUR TIME, AND

AGAIN I ECHO WHAT JUSTICE LEWIS SAID, IT'S A PLEASURE TO HAVE SOMEONE OF YOUR CALIBER ARGUING THIS CASE, AND YOU SHOULD BE COMMENDED FOR ACCEPTING THIS APPOINTMENT, BUT HE -- WHAT ABOUT THE FACT THAT WHEN MURRAY IS TOLD ABOUT THE PUBIC HAIRS, HE MAKES THESE INCULPATORY STATEMENTS --
>> I ABSOLUTELY DISAGREE THEY'RE INCULPATORY AS FAR AS -- NOT DISAGREE WITH THE GOVERNMENT. WHAT HAPPENED IS TAYLOR GETS INDICTED, TAYLOR GOES TO TRIAL. THEY'VE TAKEN MURRAY'S HAIRS AND TAYLOR'S HAIRS.
THEY INDICT TAYLOR BECAUSE HE'S GOT SEMEN, HE'S GOT PLENTY OF DNA, HAIRS THERE.
THEY INDICT HIM.
TRIAL COMES, IT'S A YEAR, YEAR AND A HALF LATER.
MURRAY'S HAIRS HAVE BEEN IN THE LAB FOR A YEAR AND A HALF.
HE KNOWS THE TRIAL'S TAKEN PLACE, FOR HIM TO SAY YOU SHOULD HAVE GOTTEN THE RESULTS BACK A YEAR, YEAR AND A HALF AGO IS OF NO IMPORT.
HE KNEW THAT BECAUSE HE WATCHED THE TRIAL OF HIS CO-DEFENDANT, OR HIS FRIEND.
SO, YES, THEY HAD MURRAY'S HAIRS UP IN THE LAB BECAUSE THEY ALL WENT TOGETHER, AND HE SURELY KNEW --
>> WAITED A YEAR AND A HALF BEFORE THEY ANALYZED THOSE --
>> THEY -- I DON'T KNOW WHAT THE STATE'S PROCESS --
>> A LONG PERIOD OF TIME.
>> ABSOLUTELY.
THEY DID NOT INDICT HIM UNTIL SOME SUBSEQUENT TIME.
IT WAS AFTER TAYLOR HAD BEEN TRIED AND CONVICTED AND ALL THE RESULTS HAD BEEN DONE AND ALL THE TESTING THAT THEY TRIED THIS.
WHAT THEY DID, AND JUST BECAUSE WE HAVE TWO NEW JUSTICES AND MAYBE I CAN GET A COUPLE MINUTES EXTRA, IS THE FIRST TRIAL, THE

DNA TESTING, THERE WAS ONE BACK WHEN THAT WAS FIRST DONE IT WAS ONE LOW SIDE.
AS JUDGE ARNOLD SAID WHEN HE DIDN'T ALLOW DNA, IT'S BECAUSE THAT ONE LOW SIDE MATCHES THE VICTIM, BUT IT ALSO MATCHES MURRAY.
SO IT'S OF NO IMPORT WHATSOEVER.
SO THAT WAS THE PURPOSE OF TRIAL IN TRIAL ONE WAS THERE WAS ONE LOW SIDE, THEY HAD NOT TESTED THE VICTIM UNTIL SUBSEQUENT TESTING, SO IT'S OF NO IMPORT WHATSOEVER, DNA.
THE SECOND TRIAL I CALLED THE ACTUAL AS WELL AS THE PROBABILITY OF TAMPERING.
REAL QUICKLY, THE STATE WOULD CALL CHASE AFTER TRIAL ONE AND GET HIM TO CHANGE HIS TESTIMONY, AND ALL OF A SUDDEN MAYBE IT'S TWO OR NOT TWO.
EACH ONE OF THOSE HE ALWAYS COMES BACK TO BEING TWO.
>> IS IT IN THE RECORD -- IS THAT THE CORRECT REPRESENTATION BY THE GOVERNMENT TO THIS COURT?
>> NOT NECESSARILY.
IN TAYLOR'S TRIAL IN WHICH MURRAY --
>> THE FIRST DEPOSITION THAT WAS TAKEN, IS THAT PART OF OUR RECORD HERE?
>> I SUPPLEMENTED IT, IT IS PART OF YOUR RECORD -- ACTUALLY THEY SUPPLEMENTED.
IT'S A GENERAL QUESTION.
WHEN HE USES -- WHEN THE TERM IS USED IN ONE SENTENCE, HE TESTIFIES IN THE PLURAL.
WHEN YOU ASK HIM SPECIFICALLY ABOUT EACH LOCATION, HE TESTIFIES SINGULARLY.
SO THEY REPRESENTED CORRECTLY, BUT THE QUESTION POSED TO THEM WAS NOT INDIVIDUAL ABOUT INDIVIDUAL SPOT.
IT WAS ONLY A BROAD QUESTION.
I BELIEVE ABSOLUTELY THIS COURT CAN REVERSE ON 220 BECAUSE OF THE COMMENT THAT IS THE COURT MADE JUST PRIOR TO ACCEPTING IT.
WE KNOW THAT THERE WAS TWO

WITNESSES THAT WERE NOT CALLED
TO TESTIFY.
IT WAS SPECIFICALLY THE STATE'S
BURDEN AS WAS INDICATED BY
PARIENTE OR QUINCE, WHEN IT WAS
SENT BACK IF THEY'RE NOT GOING
TO DO IT RIGHT WHEN IT COMES
BACK, THEN IT WOULD FLY IN THE
FACE OF THIS COURT'S RULING THE
FIRST TIME.
THEY SENT IT BACK, THEY DID NOT
PUT EVERYTHING IN, AND EVEN THE
COURT'S COMMENTS, AND LOOK AT
THE HEARING.
THERE'S NO WAY ANYBODY ON THIS
BENCH CAN READ THAT HEARING AND
BE SATISFIED THAT EVERYTHING WAS
HOKEY DOKEY AND SHOULD HAVE BEEN
COMING IN.
THAT'S ONE REASON I BELIEVE THIS
COURT CAN REVERSE, AND WE'LL
CLEAN IT UP NEXT TIME.
NEXT, THE CROSS-EXAMINES,
ABSOLUTELY.
AS WE'VE LEARNED, I WAS NOT ABLE
TO CROSS-EXAMINE THE CRITICAL
STATE WITNESS IN THIS CASE ON
THE FACT THAT MR. MURRAY'S HAIRS
WERE IN THE LAB AT THE TIME THEY
WERE HAVING ALL OF THOSE
PROBLEMS, AND ALL OF THOSE
ISSUES SHOULD HAVE BEEN SHOWN TO
THE JURY.
HE'S NOT JUST SIMPLY SOME
INDEPENDENT WITNESS.
HIS LAB WAS HAVING PROBLEMS.
ALSO WHILE HE WAS TESTIFYING,
WHILE HE WAS TESTIFYING HE WAS
NOW THE HEAD OF THE DNA LAB.
WHILE HE WAS TESTIFYING, THE DNA
LAB WAS UNDER INVESTIGATION, AND
I ASKED TO BE ABLE TO ENTER THAT
BECAUSE NOW WE HAVE A WITNESS
WHO'S UNDER ACTUAL OR THREATENED
PROSECUTION, AND I WASN'T
ALLOWED TO GET INTO THAT.
>> YOU'RE WELL BEYOND YOUR TIME.
IF YOU WILL JUST GIVE US A
SENTENCE OR TWO IN SUMMATION.
>> CERTAINLY.
I BELIEVE THE JUROR ISSUE IS
WELL FOUNDED AND THE QUESTIONS
WERE WELL FOUNDED, AND I BELIEVE
THAT'S ANOTHER REASON TO

REVERSE.
SIMPLY THIS, I ASK THIS COURT NOT TO ALLOW THIS VERDICT TO STAND.
THIS IS A SITUATION IN WHICH SOMEBODY COULD BE EXECUTED ON CHANGED TESTIMONY, NEW TESTIMONY, EVOLVED TESTIMONY.
IT VIOLATES SENSE OF DUE PROCESS, IT VIOLATES EVERYTHING THAT WE THINK IS FAIR, AND I BELIEVE THAT WITH CROSS-EXAMINATIONS AND THE JUROR ISSUE AS WELL AS THE 220 ISSUE --
>> I KNOW WE'RE OUT OF YOUR TIME, BUT I -- YOU'RE ASKING FOR A REVERSAL TO GO BACK, BUT ARE YOU ASKING FOR THE COURT TO FIND AS A MATTER OF LAW THAT Q20 OR THE ONE ABOUT THE CHANGED TESTIMONY SHOULD BE EXCLUDED BASED ON WHAT HAPPENED?
OR DO YOU THINK -- I'M NOT SURE I UNDERSTAND.
>> WELL, FIRST, I'D LIKE TO BE REMANDED AND DIRECTIONS TO DISCHARGE BASED ON THE EVOLUTION, BUT AT LEAST A TRIAL.
AND I WOULD ASK THAT IT BE SENT OUT, BUT ABSOLUTELY IF THE COURT SENT IT BACK AND SAID THE STATE COULD TRY AGAIN, WE WOULD ACCEPT THAT CHALLENGE.
>> ON THE ONE ON THE CHANGED TESTIMONY IT'S EITHER, YOU KNOW, NOT TRUTHFUL AND IT'S UNRELIABLE AS A MATTER OF LAW, BUT WHAT ELSE COULD ANYONE PUT ON IN THAT ONE?
>> I DON'T KNOW.
THANK YOU.
>> ALL RIGHT, THANK YOU VERY MUCH.
THANK BOTH OF YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR TEN MINUTES.
>> PLEASE RISE.

>> PLEASE RISE.
>> LADIES AND GENTLEMEN, THE Florida SUPREME COURT.
PLEASE BE SEATED.